DOCUMENT RESUME

ED 197 848 PS 011 986

TITLE Extract from the Grounds for the Swedish Legislation Relating to Prohibition of Corporal Punishment.
INSTITUTION Ministry of Justice, Stockholm (Sweden).
PUB DATE [79]
NOTE 7p.

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Child Rearing; *Corporal Punishment; *Discipline Policy; *Federal Legislation; Foreign Countries; Guidelines; Parent Child Relationship; *Parent Responsibility; *Public Policy
IDENTIFIERS *Sweden

ABSTRACT

This document provides guidelines for interpreting the proposed amendment to the Swedish Children and Parents Code concerning the punishment of children: "A child may not be subjected to corporal punishment or other injurious treatment." Prohibition of forcible correction is intended to protect the child not only against bodily injuries but also against mental suffering and disorders resulting from the use of violence. The Code should also reflect the rejection by society of what in daily speech is called mental maltreatment. In subsequent work the commission of enquiry will examine the need for a clause which in positive terms indicates what should be comprehended by parents' mental care of their children. With the new clause in the Children and Parents Code there can be no doubt that a disciplinary measure against a child is a criminal offense, if a corresponding act against another person is punishable as maltreatment under the Penal Code. Further, maltreatment which is not gross and which has not been committed in a public place may be prosecuted by a public prosecutor only if the person aggrieved complains to the authorities or if prosecution is required on public grounds. Publicity concerning the amendment should be directed to parents and various child care bodies and should be an element in the education of parents. (Author/RH)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

ED197844

PS 011986

Extract from the grounds for the Swedish legislation relating to prohibition of corporal punishment

Text of the law:

It is hereby prescribed that chap. 6, § 3, of the Children and Parents Code shall be amended as follows.

A custodian shall exercise such supervision over a child committed to his/her care as is necessary having regard to the child's age and other circumstances.

A child may not be subjected to corporal punishment or other injurious treatment.

- - - - - - -

After the amendment introduced in 1966 the Children and Parents Code contains no clause entitling parents to subject their children to corporal punishment for educational purposes. On the other hand there is nothing in the Code which expressly forbids personal chastisement. The question now is whether a prohibition of corporal punishment of children should be introduced in the Code.

What in everyday language is called maltreatment of children is a serious evil which the society must combat with all the powers at its command. The means that should be used are not only penalties and other interventions by public authorities in concrete cases, but also different forms of preventive measures.

From actual maltreatment of children the step is a long one to the light chastisements that may occur in the upbringing of children. Some such acts cannot even be counted as mild maltreatment in the meaning of the Penal Code.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Bertil Ekdahl
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

Child psychiaticians and psychologists have, however, long been agreed that corporal punishment of children at all is inappropriate. This view has, in the course of time, also become more common among the general public. Even mild punishments may involve risks for the harmonious development of a child.

From the purely legal point of view it is uncertain to what extent mild chastisements of children are punishable. Doubt has been expressed, for instance, concerning the penal compass of the 1966 amendment of the law. Many parents undoubtedly interpret the silence of the Children and Parents Code in the manner that some right to corporal punishment exists. A serious danger in such a view is that it readily paves the way to what is indubitably harmful violence to children. A person who beats his child may tend himself to think that teh act comes under the category of permitted corporal punishment or to justify his mode of action by reference to the right of corporal punishment. As long as it is not entirely clear that the use of violence in the bringing up of children may not occur in any form, therefore, it may be difficult to get to grips with the real maltreatment of children.

For these reasons I consider, as do almost all of the referral bodies, that an express prohibition of corporal punishment of children should be introduced in the Children and Parents Code. Through such a prohibition we should reach the end-point in an evolution of law which has implied that our society has increasingly rejected corporal punishment as a means of education. This evolution reflects, in turn, the now prevailing attitude that a child is an independent individual who can demand full respect for his or her person.

The prohibition of forcible correction is intended, of course, to protect the child not only against bodily injuries but also against mental sufferings and disorders consequent on the use of violence. Such protection alone, however, cannot

be considered adequate. The Children and Parents Code would give a distorted picture of the educational measures which threaten children's mental health and development if the proposed prohibition applied solely to physical acts. The Code should also reflect the rejection by society of what in daily speech is called mental maltreatment. I therefore consider, like the commission of enquiry, that the proposed clause should contain also a prohibition against subjecting a child to other form of injurious treatment than corporal punishment. This prohibition as well is an expression of consideration for children's integrity and inherent value.

It might be justified per se, as the Skåne & Blekinge Court of Appeal has commented, to link the new clause to general regulations concerning the duties of custodians in the bringing up of children. The now proposed prohibition, however, constitutes only the first step in a general review of the rules relating to the care of children. In its subsequent work the commission of enquiry will examine the need for a clause which in positive terms indicates what should be comprehended by parents' mental care of their children. In the meanwhile it should suffice to introduce a clause of the purport proposed by the commission.

With the new clause in the Children and Parents Code there can be no doubt that a disciplinary measure against a child is a criminal offence if a corresponding act against another person is punishable as maltreatment under the Penal Code. To inflict a penalty for infringement of the clause beyond what follows from the rules of the Penal Code, on the other hand, is not called for. As has been pointed out in the comments on the proposal, it would be certainly unfortunate if the state could prosecute and punish any infringement, however slight, of a prohibition against corporal punishment. The rules governing warrant for prosecution also ensure the right of refusal to prosecute trifling acts which in themselves fall within the domain of what is punishable. According to chap. 3, § 11, of the Penal Code, maltreatment which is not gross and which has not been committed in a public place may be prosecuted by a public prosecutor only

if the person aggrieved notifies the offence for prosecution or if prosecution is required on public grounds.

Better than relying on legal penalties is, through information and education, to attempt to influence the attitude of parents and others who have dealings with children and young people. Both the commission and several referral bodies point out that there is insufficient knowledge today of the risks of corporal punishment in child education. An unambiguous prohibition of corporal punishment in the Children and Parents Code could be a valuable pedagogical support in the striving to convince parents and others that no forms of violence may be used as means for the bringing up of children. Like the commission, I consider it important that a law amendment is supplemented by effective and continuous information concerning the new regulation. Otherwise there is a great risk of its remaining a mere paper amendment.

The information should be directed both to parents and to various child care bodies. Like the commission and several referral bodies, I also consider it imperative to attempt to influence young people's attitudes to the relation between children and parents. It is therefore important that schools should impart knowledge as to what educational methods are appropriate and permitted. Information on the contents of the Children and Parents Code on this point should also be an element in the education of parents. This can be combined with discussions and positive advice as to how best to deal with the conflicts and problems in the family which often underline eruptions of ciolence to children.

As regards the formulation of the proposed clause I likewise adhere to the commission's proposal. The clause should be inserted as a second paragraph in chap. 6, § 3, of the Children and Parents Code and should state that children may not be subjected to corporal punishment or other injurious treatment.

By corporal punishment is meant principally an act which inflicts bodily injury or pain on a child, even if of an

entirely mild or quickly transitory nature. It is solely the use of violence for the purpose of punishment that is envisaged, i.e. action directed against a child after the event, for something it has done or failed to do. That, in other cases, parents must have some right to overcome physical resistance from a child is unavoidable if they are to fulfil their duties of supervision, expecially when the child is small. It may, for example, be a matter of lifting or pulling a child out of the way to prevent it from hurting itself or others.

Physical acts against children which do not have the object of punishment may, however, in some cases also entail such injurious treatment as is forbidden in the second part of the clause. They would generally be punishable also under the Penal Code. Confinement to a room or the like is sometimes used, principally for punishment. This may create anciety in the child and be denoted as an impermissible outrage upon the child, when, in view of the circumstances, it is not to be considered as an outright corporal punishment or otherwise falls under the provisions of the Penal Code. Also such actions as to open a child's letters and similar violations of integrity may, depending in part on the age and maturity of the child, be contrary to the prohibition against injurious treatment.

But, as noted, the main intention of this prohibition is to prevent injurious mental treatment of children, whether the object is punishment or any other motive. The prohibition is directed against treatment which involves a danger for the child's personality development. An example is if the parents systematically freeze out or ridicule a child.

Whereas the probhibition against bodily punishment is clear in its signification, it is necessary, when assessing what otherwise is injurious treatment, to fall back upon general valuations of what is compatible with a good and loving upbringing with respect for the child's personality. It must be a matter for the commission, in its subsequent work on

children's rights, to consider whether it is possible and appropriate in any respect to award to children more specific legal rights vis-à-vis their custodians.

By placing the clause in the Children and Parents Code, it will be directed to parents and other guardians. I do not consider it necessary, as proposed by some referral bodies, to introduce in another law a corresponding rule for other persons who have the charge of children. I take it that the now recommended clause will in practice be apprehended as a norm applying to all who have charge of children. I also recall that provisions which prohibit corporal punishment and other injurious treatment of children axist in the Education Act (1962:319), the Statute (1960:595) for Child Care Institutions and the Statute (1960:728) for Reformatory Schools.